

## ***8 Official Opinions of the Compliance Board 35 (2012)***

- ◆ Exceptions Permitting Closed Sessions
    - ✧ Collective Bargaining
      - ✦ discussion of collective bargaining negotiations when public body had statutory duty to review any agreement before the negotiations public party executed it
  - ◆ Closed Session Procedures
    - ✧ Written statement
      - ✦ preparation before closed session required
      - ✦ level of detail required
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February 22, 2012

***Re: City of Annapolis Financial Advisory Commission  
(Tom Marquardt, Complainant)***

We have considered the complaint of Tom Marquardt of Capital Gazette Newspapers that the City of Annapolis Financial Advisory Commission (“Commission”) violated the Open Meetings Act (the “Act”) by discussing in a closed session matters required to be discussed publicly and failing to follow the statutory procedures for meeting in a closed session.

The first issue presented is whether the Commission properly closed its December 8, 2011, meeting under State Government Article (“SG”) §10-508(a)(9). That provision gives a public body the discretion to close a meeting in order to “conduct collective bargaining negotiations or consider matters that relate to the negotiations.” Complainant argues that the Commission may not close a meeting under that exception to the Act’s open meetings requirement because the Commission does not itself conduct collective bargaining negotiations. The Commission responds that it was created to advise the Mayor and City Council on financial issues and that the duties assigned to it explicitly include “the review of collective bargaining agreements prior to execution....”<sup>1</sup> Further, the Commission explains, it was decided that the Commission should be briefed on ongoing negotiations so that the Commission could give advice on the potential fiscal impact of the possible outcomes on the City, and that was what occurred during the closed session on December 8. The Commission provided us with its minutes of that closed session; they reflect such a briefing.

We have not limited the collective bargaining exception to public bodies which themselves conduct the negotiations. In 3 OMCB Opinions 245 (2002), we considered whether a board of county commissioners could claim the exception as the basis for meeting in closed session with the local school board to discuss collective bargaining negotiations then being conducted only by the school board. The commissioners stated that the school board's ability to conduct the negotiations required an understanding of the constraints imposed by the county's budget. Noting that SG §10-508(a)(9) allows a public body to close a meeting in order to "consider matters that relate to the negotiations" as well as actually conduct the negotiations, and construing the exception in favor of openness, as required by SG §10-508(c), we "consider[ed] that a matter 'relates to the negotiations' only if it has a direct and material bearing on the conduct of negotiations." *Id.* at 249. We then concluded that the test was met because the school board's bargaining strategy would be affected by the amount of appropriations available for the purpose.

Here, the Commission is statutorily charged with reporting on the public debt the City may incur without jeopardizing its bond rating and with advising the Mayor and City Council on financial issues, "includ[ing] the review of collective bargaining agreements prior to execution." The Commission's exercise of that advisory role could bear directly and materially on whether the Council ratifies a preliminary agreement and thus on the negotiations themselves. We accordingly conclude that the discussions described in the closed-session minutes fell within the exception.

The second issue presented is whether the Commission followed the statutory procedures for closing a meeting. When a public body is performing a function subject to the Act and wishes to meet in a closed session authorized by one of the SG §10-508 exceptions, it must first meet in a properly-noticed public meeting and conduct a vote on a motion to close the meeting. SG §10-508(d). It appears that the Commission followed those steps. Further, before a public body closes the meeting, its presiding officer must "make a written statement of the reason for closing the meeting, including a citation of authority under [SG §10-508], and a listing of the topics to be discussed." It is not clear to us that the Commission prepared such a document before holding the closed session; the documents provided to us refer to events in the past tense, as in, for instance, the statement that "No action was taken." If in fact no closing statement was prepared before the meeting was closed, the Commission violated the Act in that regard.

Finally, the public body must provide the public with as much detail, both in the closing statement and in its summary of the closed session in the minutes of the next open meeting, as it can without revealing the information that the Act permits the public body to keep confidential. See 7 OMCB Opinions 225, 228 (2011). The repetition of the language of the exception, without more, does not satisfy the Act. Here, if the identity of the parties to the negotiations was not confidential, the Commission should have included that information. And, as we have stated before, we encourage a public body to use the closing statement as a mechanism by which to allay unwarranted suspicions that the claimed exception does not apply. See *id.* at 228-29. The Commission's unadorned invocation of the collective bargaining exception - which it summarized as applying only to a closing "to conduct collective bargaining negotiations" - does not suggest how the exception, described that way, could possibly apply to an advisory body which lacks employees.

In sum, we find that the Commission properly closed its meeting to consider matters relating to ongoing collective-bargaining negotiations because the Commission occupies an advisory role in the City Council's ratification of collective bargaining agreements. With respect to the Act's procedural requirements, the Commission should include in its closed-session documents enough detail to establish the applicability of the exception claimed and as much detail as it can without compromising truly confidential information.

Open Meetings Compliance Board

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